D.B. CIVIL SPECIAL APPEAL (W) NO.554/2006

Pukhraj & Ors. Vs. State of Rajasthan and others.

Date : 19.12.2006

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. B.N. Kalla for the appellants.

Having heard learned counsel for the appellant, we are of opinion that no case is made out for interference in the appeal.

The learned Single Judge has found the restoration of suit which was dismissed in default to be in order and the circumstances noticed by him are as under:-

> "By the impugned order, the suit of the plaintiff, which was dismissed in default, has been restored. It is contended by learned counsel, firstly, that some of the defendants had already expired long back, and their LRs have not been brought on record, therefore, the suit could not be restored. The other

> submission made is, that in view of Annex.7, it is way-back on 13.4.2000 itself, that it had become clear to the plaintiff, that the suit had been decided, as such, there was no justification for not filing restoration application till 29.1.2001, therefore also, the suit could not be restored."

Therefore, in the aforesaid circumstances, we are of the opinion that no fault can be found in the order of the learned Single Judge in not interfering with the order of restoration of the suit by the Revenue Court. So far as the abatement of the suit against the dead person is concerned, the learned Single Judge has observed that since the person, who has died, suit against him is abated but the same would be continued against the remaining persons and their interest are not effected by the abatement of the suit. The appellant also does not ask for more.

In view thereof, there is no merit in the appeal. The appeal, therefore, fails and is hereby dismissed.

[GOPAL KRISHAN VYAS], J. [RAJESH BALIA], J.

babulal/